

July 2004

Update: Friend of the Court Domestic Violence Resource Book (Revised Edition)

CHAPTER 4

Custody and Parenting Time

4.1 The Best Interest Factors

Immediately before Section 4.2, in the middle of page 95, insert the following text:

When weighing the best interest factors, the court may also interview the child to determine if the child has a preference regarding custody. MCR 3.210(C)(5)* states:

“(5) The court may interview the child privately to determine if the child is of sufficient age to express a preference regarding custody, and, if so, the reasonable preference of the child. The court shall focus the interview on these determinations, and the information received shall be applied only to the reasonable preference factor.”

*Effective May 1, 2004.
Administrative Order 2002-13.

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4.5 Joint Custody

D. Joint Custody Agreements

Insert the following text at the bottom of page 105:

The Michigan Supreme Court, in *Harvey v Harvey*, ___ Mich ___, ___ (2004), clarified the responsibilities of the trial court in making a custody determination under the Child Custody Act, MCL 722.21 et. seq. The Court held that under the Child Custody Act, the circuit court is *required* to determine the best interests of the children before entering an order resolving the custody dispute. The Court clarified that this does not require the trial court to conduct a hearing or otherwise engage in fact-finding when the parties agree to custody. The Court stated:

“However, the deference due parties’ negotiated agreements does not diminish the court’s obligation to examine the best interest factors and make the child’s best interests paramount. MCL 722.25(1). Nothing in the Child Custody Act gives parents or any other party the power to exclude the legislatively mandated ‘best interests’ factors from the court’s deliberations once a custody dispute reaches the court.”